

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.606(b))	MM Docket No. <u>01-87</u> /ED
Table of Allotments,)	RM-10092
TV Broadcast Stations.)	
(International Falls and Chisholm, Minnesota)	

NOTICE OF PROPOSED RULE MAKING

Adopted: May 28, 2001

Released: April 6, 2001

Comment Date: May 28, 2001

Reply Comment Date: June 12, 2001

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Channel 11 License, Inc. ("petitioner"), permittee of a television station to operate on NTSC Channel 11 at International Falls, Minnesota (File No. BPCT-19960709KR), proposing the reallocation of Channel 11 from International Falls to Chisholm, Minnesota, and modification of its authorization accordingly to specify Chisholm as its community of license.^{1, 2}

2. Petitioner filed its rule making request pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties the opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). We evaluate television petitions for a change in community of license pursuant to the television allotment priorities set forth in the Sixth Report and Order on Television Allocations, 41 FCC 148 (1952).³

¹ Petitioner also requests that the Commission grant satellite status to its proposed station operation at Chisholm to enable it to operate Channel 11 as a satellite of Station KBJR-TV, Channel 6, Superior, Wisconsin-Duluth, Minnesota. However, the proper forum to consider such request would be in the context of an application and not this rule making proceeding. Therefore, we will not address the requested use of Channel 11 at Chisholm as a satellite operation in this proceeding.

² There is no paired DTV Channel for Channel 11 at International Falls.

³ The television allotment priorities are: (1) provide at least one television service to all parts of the United States; (2) provide each community with at least one television broadcast station; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities.

3. In support of the proposal, petitioner states that in order to maximize coverage to areas and populations to be served by the new Channel 11 facility at Chisholm, it proposes to relocate its authorized transmitter site to Meadow Brook Ridge, located 41.7 kilometers north of Chisholm (pop. 5,290)⁴ at coordinates 47-51-39 NL and 92-56-43 WL. Further, petitioner advises that the proposed use of Channel 11 at the Meadow Brook Ridge site is located 72.2 kilometers (44.9 miles) from its currently authorized site at International Falls (pop. 8,325), whereas a minimum distance separation for co-channel television stations is 304.9 kilometers (189.5 miles) in Zone II. Therefore the proposals are mutually exclusive. In further support, petitioner advises that its proposal will advance the first three television allocation priorities and result in a significant net service benefit. In this regard, petitioner claims that the reallocation of Channel 11 to the Meadow Ridge site will provide a first Grade B service to two white areas totaling 3,781 square kilometers and 9,325 persons. Although the reallocation will also result in the creation of one white area consisting of 3,582 square kilometers and 8,392 persons, petitioner reports that it will provide a net increase of white area service to approximately 200 square kilometers and 933 persons. Therefore, petitioner avers that the service to be provided to white areas and populations at Chisholm advances priority one to provide at least one television service to all parts of the United States.

4. Notwithstanding the white area gain and loss analysis, petitioner contends that as Channel 11 at International Falls is not built, it is not considered an "existing" station for determining white area and population comparisons, citing Farmington and Gallup, New Mexico ("MO&O"), 14 FCC Rcd 18983 (1990). Petitioner avers that no actual white area loss would be created at Farmington by the reallocation as the inactivation of the station at that location may perpetuate an existing white area, but will not create one, citing at Farmington and Gallup, New Mexico ("R&O"), 11 FCC Rcd 2357 at ¶ 19. Petitioner adds that discounting the potential coverage from Channel 11 at International Falls will result in actual white area service at Chisholm to 18,929 people and an area comprising 12,247 square kilometers.

5. Petitioner asserts that the reallocation of Channel 11 to Chisholm will also advance television allotment priority two to provide each community with at least one television broadcast station. Although International Falls would lose its only potential television service, it would provide Chisholm with its first local television transmission service. In support of the reallocation, petitioner reports that Chisholm is located in the larger, more populous St. Louis County (pop. 199,103) that continues to grow economically and in population, as opposed to International Falls which is located in the less populous Koochiching County (pop. 15,497), which is comprised mainly of state forest land. Further, petitioner avers that although Chisholm's population is slightly smaller than International Falls, the city is surrounded by similarly sized communities in St. Louis County, including Hibbing, Virginia, Eveleth, and others that are considered part of Minnesota's "Iron Range." Petitioner claims that the reallocation of Channel 11 to Chisholm will enable a television station to provide city grade or Grade A coverage to all of those cities in the Iron Range and Grade B coverage to more than 100,000 persons. By comparison, petitioner contends that the International Falls allotment would provide Grade B

⁴ Population figures were taken from the 1990 U.S. Census.

coverage to less than 20,000 persons.

6. Petitioner states that the proposed reallocation would also serve the third television allocation priority to provide a choice of at least two television services to all parts of the United States. In this regard, petitioner claims that the reallocation of Channel 11 to Chisholm would greatly increase the degree of service to a gray area. Petitioner reports that the theoretical gray area that would be served by the current International Falls allotment is comprised of 1,047 persons and 1,055 square kilometers, whereas the gray area that would be served by the proposed reallocation to Chisholm consists of 76,665 persons and 7,672 square kilometers. According to petitioner's engineering analysis, the gray area that would be served by the Chisholm facility compared to the International Falls facility would have a population of 75,618 persons and a land area of 6,617 square kilometers.

7. Petitioner concludes that the reallocation of Channel 11 to Chisholm will benefit a significant number of small but substantial communities, while International Falls will not lose an existing service. Further, under the proposed reallocation, a station operating on Channel 11 at Chisholm will also serve various other communities located within its Grade A contour, and will enable the residents of those communities to have competition in local broadcasting between the new Channel 11 at Chisholm and WIRT(TV), Channel 13, the Hibbing, Minnesota, satellite station on WIDO-TV, Duluth. As an added benefit, petitioner advises that the reallocation proposal represents a more efficient allocation of U.S. television allotments. According to petitioner, over one-third of the Grade B coverage contour (34.7%) of the International Falls authorized facility would cover Canada rather than the United States, whereas less than 5% of the Grade B coverage contour of the proposed Chisholm facility will cover Canada. Petitioner asserts that as the proposed reallocation will serve a substantially greater U.S. population and area than the existing allotment at International Falls, and would result in a net benefit to numerous Minnesota communities, the proposal will better advance the Commission's 307(b) objectives than the current International Falls allocation.

8. According to a staff engineering study, Channel 11 at International Falls would have served a white area of 2,422 sq. km. containing a population of 448 people, and a gray area of 1,239 sq. km. and 777 people. The allotment would also have served a total U.S. area of 13,670 sq. km. and 20,302 people. By way of contrast, Channel 11 at Chisholm will serve a white area of 2,466 sq. km. and 6,040 people, and a gray area of 2,882 sq. km. and 9,478 people. It will also serve a total U.S. area of 23,230 sq. km. and 123,341 people. Further, our analysis indicates that Channel 11 allotment at Chisholm will provide 77 dBu coverage over the entire community. Additionally, Channel 11 can be allotted to Chisholm consistent with the minimum distance separation requirements of Section 73.610(b)(2) of the Commission's Rules with respect to domestic allotments utilizing the petitioner's specified site located 41.7 kilometers north of the community at coordinates 47-51-39 NL and 92-56-43 WL. However, as Chisholm is located within 400 kilometers (250 miles) of the U.S.-Canada border, and will result in a short-spacing to vacant Channel 12, Lac La Croix, Ontario, Canada, concurrence in the allotment by the Canadian Government, as a specially negotiated short-spaced allotment, must be obtained.

9. We believe the public interest would be served by soliciting comments on the petitioner's proposal to reallocate Channel 11 from International Falls to Chisholm, Minnesota. The proposal, if adopted, would provide Chisholm with a first local television service. Although the proposal would remove the only potential television service at International Falls, the Channel 11 facility is not built and therefore does not represent a loss of service upon which the public has come to rely.

Therefore, we are proposing to reallocate NTSC Channel 11 from International Falls to Chisholm, Minnesota, and modify the authorization of Channel 11 License, Inc. to specify Chisholm, Minnesota as its community of license.

10. Accordingly, we seek comments on the proposed amendment to the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
International Falls, Minnesota	11	--
Chisholm, Minnesota	--	11

11. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

12. Interested parties may file comments on or before May 28, 2001, and reply comments on or before June 12, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445

Twelfth Street, SW; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Tom W. Davidson, Esq.
Natalie G. Roisman, Esq.
Akin Gump Strauss Hauer & Feld, L.L.P.
1333 New Hampshire Ave., NW.
Suite 400
Washington, DC 20036

13. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

14. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Allotments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.